IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FIFTH DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE R.SUBHASH REDDY

WRIT PETITION NO : 5596 of 1999

Between:

Abu Turab son of late Sri Shaik Meeran,Bhainsa village and mandal,Adilabad district.

..... PETITIONER

AND

1. The District Collector, Adilabad district.
2. The Mandal Revenue Officer, Bhainsa Mandal
3. The Mandal Revenue Inspector, Bhainsa
4. The Wakf Board, rep.by it's Inspector-Auditor, Adilabad district.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of mandamus declaring the letter of the District Collector, Adilabad the first respondent herein No.Wakf/ADB/9-98 dated 1-3-99 directing the Mandal Revenue Officer, Bhainsa, Adilabad district to take custody of the suit lands covered by SY. No.166 in all admeasuring Ac.28.07, in possession and enjoyment of the petitioner and to handover the same to the Inspector-Auditor Wakf -the fourth respondent herein and the consequential directions of the Mandal Revenue Officer, the second respondent herein in his memo No.B/528/99 dated 6-3-99 directing the Mandal Revenue Inspector, the third respondent herein to comply with the said directions of taking custody of the suit lands and handing over the same to the fourth respondent without any prior notice or statutory enquiry or otherwise as arbitrary, illegal and discriminatory and violative of principles of natural justice and to hold the same as null and void and pass such other or further orders as this Hon'ble Court may deem fit and proper.

For the Petitioner: SMT P. PRATAP REDDY

For the Respondents 1 to 3: G.P. FOR REVENUE
For the Respondent No.4. Mr.A.M.Qureshi, SC for Wakf Board.

The Court Made the Following :

ORAL ORDER

The petitioner has questioned the proceedings No. Wakf/ADB/9-98, dated 1-3-1999 passed by the District Collector, Adilabad District, first respondent herein, and consequential proceedings in Memo No.B/528/99, dated 6-3-1999 issued by the Mandal Revenue Officer, Bhainsa Mandal, Adilabad District, second respondent herein.

Referring to the proceedings issued by the District Collector, Adilabad District, dated 1-3-1999, the Mandal Revenue Officer, Bhiansa Mandal has issued impugned proceedings dated 6-3-1999 directing the Mandal Revenue Inspector to take possession of the land in Sy.No.166, admeasuring Ac.28.07 guntas and handover to the Inspector/Auditor Wakf, Adilabad. It is the case of the petitioner that the said land belongs to Masque Mashaikh Mohalla Gugri Galli—a registered wakf, and, he is in possession of the land in question for the last several years under valid lease. The petitioner has questioned the impugned proceedings on the ground that the first respondent-District Collector did not conduct any enquiry before issuing the proceedings dated 1-3-1999; as such the petitioner cannot be dispossessed from the land in question without issuing notice and conducting enquiry.

In the counter-affidavit filed on behalf of the respondents, it is stated that the Mosque Mashaikh Mohalla Gugri Galli with attached properties in Sy.Nos.1, 162 to 166, 399, 628 to 632, 587, 788 and two houses are the wakf properties and the said properties are notified in A.P. Gazette No.1-A, dated 04-01-1990. Further, it is stated that the appointed Muthawalli expired and one Sri Syed Humayun Raz has been managing the affairs of the properties and failed to comply with the statutory duties as per the provisions of Wakf Act, 1995, as such; the said institution came under the direct management of the Wakf Board and the person from whom the petitioner is claiming lease is not an authorized to grant lease for more than three years. It is further stated that the petitioner is not entitled to continue in possession as the said property

belongs to Wakf and institution alone is entitled to have rights over the same.

As can be seen from the averments in the counter-affidavit that no notice was issued to the petitioner and no inquiry was conducted before passing the orders of eviction. The impugned proceedings dated 06-03-1999, to take over the possession of the land including two houses, were issued by the Mandal Revenue Officer, Bhainsa pursuant to the orders of the District Collector dated 01-03-1999. Even a copy of said proceedings also did not refer to any order for eviction and for dispossession of the petitioner.

Inasmuch as the petitioner's possession is not disputed in the counter-affidavit, unless the petitioner is given an opportunity and hearing, he cannot be evicted as otherwise than due process of law. Even assuming that the said properties belong to Wakf Board and if the petitioner is in wrongful possession, before passing the order for eviction, the petitioner is entitle for notice. In that view of the matter, I set aside the impugned proceedings to the extent of land claimed by the petitioner, admeasuring Ac.28.07in Sy.No.166 of Bhainsa village. However, it is made clear that it is open for the respondents to take steps in accordance with the provisions of the Wakf Act,1995 or any other law by giving notice to the petitioner, if the petitioner's possession over the land in question is un-authorized.

Subject to above direction, the writ petition is disposed of. No costs.

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R.SUBHASH REDDY,J

25TH JUNE 2004

*TSNR/Msnr

To

1. The District Collector, Adilabad district.
2. The Mandal Revenue Officer, Bhainsa Mandal
3. The Mandal Revenue Inspector, Bhainsa
4. The Wakf Board, rep.by it's Inspector-Auditor, Adilabad district.

5. Two CCs to G.P for Revenue(OUT)

6. Two C.D.COPIES